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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): **Rolf Kawa, et al.**

Examiner: **Danielle D. Sullivan**

Application No.: **10/511,633 Conf. 8614**

Art Unit: **1616**

Filed: **May 6, 2005**

Docket No.: **C 2609 PCT/US
(P40043 USA)**

Title: **SUN PROTECTING EMULSION
PROVIDED WITH A FOAM DISPENSER**

Rule 37 C.F.R. § 1.132 Declaration of Rolf Kawa

I, Rolf Kawa, declare and state that:

1. I am a co-inventor of this invention. I am currently employed by Cognis GmbH as a Manager of Application Technology. I have held this position for about 24 years. Previously, I worked for Lingner & Fischer, Germany, in a similar position for 8 years. I have extensive experience in cosmetic formulations, specifically emulsions and foamable compositions for sun-protection.

2. I am familiar with the prosecution history of U.S. Patent Application Serial No. 10/511,633 and have reviewed the claims currently pending therein. I understand that claims 34-38 of this application have been rejected as allegedly obvious over Polovsky et al. (US 5,384,334; "Polovsky") in view of Ansmann et al. (US 6,280,712; "Ansmann"), and that claims 21-25 and 27-33 have been rejected as allegedly obvious over Polovsky in view of Ansmann, further in view of Van der Heijden et al. (WO 00/78629). I have reviewed these publications and the compositions disclosed therein.

3. The Examiner has stated that Ansmann teaches the equivalence of polyglycerol poly-12-hydroxystearates and alkyl glucosides.

4. As one skilled in the art having intimate knowledge of the present invention, I attest to the fact that polyol poly-12-hydroxystearates, particularly

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Declaration of Rolf Kawa under 37 C.F.R. 1.132

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polyglycerol poly-12-hydroxystearates, when incorporated into sun protection emulsions, produce very stable emulsions which can be foamed particularly easily, thus enabling the UV protection factors to be distributed evenly on the skin. This foam-forming effect, specific to the polyol poly-12-hydroxystearates, is surprising in view of the fact that other polyol esters do not possess the same ability to produce foamable emulsions. For example, polyglycerol polyricinoleate, which is also cited by Ansmann as a suitable polyol ester nonionic surfactant (column 4, lines 59-63), fails to produce a foamable sun protection emulsion, when substituted for polyglycerol poly-12-hydroxystearate (Specification, Comparison Example (non-foamable), pages 31-32).

5. As one skilled in the art having intimate knowledge of the present invention, I further attest to the fact that polyglycerol poly-12-hydroxystearate and alkyl glucosides are not equivalent surfactants, particularly in regard to their foaming behavior, and the unique foam-forming properties of the former when incorporated into sun protection emulsions as described above.

6. I hereby declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Rolf Kawa



Date